IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9328 OF 2004

Sunda Associates)
a proprietory concern, having)
its office at 585, Akash Darshan)
Society, Jayawant Apartments,)
Salisbury Park, Pune - 411 037)
through its proprietor Smt.)
Gnwantibai Shantilal Palesha.) ... Petitioner

Versus

Mr. Ajit Kisanlal Agarwal)
Adult, Occupation - Business)
residing at Flat No.6, 3rd flr.,)
Sunda Heights, 1368, Kasba Peth,)
Pune.) ... Respondent

Mr. Kiran Bagalia i/b Ms. Kavita Kothavala and Mr. R.C. Bansal for the petitioner.

Mr. S.N. Chandrachood for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH MARCH, 2005.

ORAL JUDGMENT:-

1. The petitioner is the original applicant. It is a proprietary concern. The petitioner's case is that the petitioner owns Flat No.6 situate on the Third Floor, in the premises known as Sunda Heights at 1368, Kasba Peth, Pune (for short, "the suit premises"). The respondent had taken the suit premises on leave and licence for a period of 11 months with effect from 21/12/1999 at a monthly license fee of Rs.3,000/-. The said leave and licence agreement was executed on 21/12/1999. The

respondent was required to vacate the suit premises on or before 20/11/2000. According to the petitioner, on the expiry of the said period, the respondent failed to vacate the suit premises. The petitioner, therefore, sent a notice dated 29/12/2000 calling upon the respondent to vacate the suit premises. The said notice was duly received by the respondent. However, the respondent did not give any reply to the said notice nor did he vacate the suit premises.

2. The petitioner, therefore, filed an application before the Competent Authority, Pune, being Application No.31 of 2001 under section 43 of the Maharashtra Rent Control Act, 1999 (for short, "the said Act") praying, inter alia, that the respondent may be directed to remove himself from the suit premises and deliver vacant and peaceful possession of the suit premises to the petitioner.

3. It appears that the summons was served on the respondent on 6/7/2002. The respondent filed his written statement. However, he failed to apply for leave to defend and also failed to file necessary affidavit till 5/9/2002. The Competent Authority, therefore, referred to section 43(4)(a) of the said Act and observed that as per section 43(4)(a) it was incumbent upon the respondent to obtain leave to defend within thirty days from the date of service of summons. It was further observed that as per the said provision, if a person fails to obtain

leave to defend within 30 days from the date of service of summons, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction. The Competent Authority observed that the petitioner had pleaded licensor-licensee relationship. It is the petitioner's case that the licence had expired on 20/11/2000 but the respondent had not obtained leave to defend and, hence, the contentions of the petitioner shall be deemed to have been admitted by the respondent. In view of this, the application was allowed on 24/9/2002.

4. The respondent filed revision application being Revision Application No.105 of 2003 before the Appellate Competent Authority, Divisional Commissioner, Pune at Pune. The respondent stated that his advocate had committed a mistake. The respondent claimed to be the owner of the suit premises and prayed that the matter may be remanded so that he would get opportunity to adduce evidence before the trial court. By consent of the parties, the Appellate Authority remanded the matter to the Competent Authority on a condition that the respondent deposits a sum of Rs.1,40,000/- with the Competent Authority within a period of one week from the date of that order. Accordingly, the matter was remanded to the Competent Authority on 23/7/2004.

5. After remand, the respondent's application for leave to defend being Application No.31 of 2001 was heard by the Competent Authority. The Competent Authority took a view that as the matter was for fresh hearing, it is necessary to see whether the application for leave to defend is within thirty days from 31/7/2004. The Competent Authority further observed that it is necessary to consider the application for leave to defend on merits because opportunity must be given to the respondent to put forward his case. The Competent Authority allowed the application for leave to defend on the ground that the respondent has contended that though the agreement is styled as leave and licence agreement, the transaction was in the nature of sell-purchase and it is his case that his signature was obtained by the petitioner by making a false representation. The said order is challenged in this petition.

6. I have heard, at some length, Ms. Bhagalia, the learned counsel appearing for the petitioner. She contended that there is an inbuilt limitation period provided under section 43 of the said Act which requires that an application for leave to defend must be filed within 30 days from the date of service of summons. In the circumstances, the application filed by the respondent on 24/8/2004 is not within the statutory limitation. The learned counsel placed reliance on the judgments of the Supreme Court in **Prakash H. Jain v. Marie Fernandes (Ms), (2003) 8 SCC 431**; and in Officer

on Special Duty (Land Acquisition) and Another v. Shah Manilal Chandulal and Others, (1996) 9 SCC 414; and on **the judgment of this Court in H.M.P. Enggrs. v. Rallies India 2003 (3) Arb. L.R. 510 (Bombay)** and contended that since the said Act prescribes period of limitation for filing an application for leave to defend, the provisions of the Limitation Act will not apply to it. The application filed by the respondent is, therefore, clearly barred by limitation and the Competent Authority had no powers to condone the delay. The learned counsel urged that in the circumstances, the impugned order deserves to be set aside.

7. I have also heard Mr. Chandrachood, the learned counsel appearing for the respondent. He placed reliance on the judgment of the Supreme Court in **John Impex (P) Ltd. v. Surinder Singh and others, (2003) 9 SCC 176** and contended that the respondent has a good case on merit and, hence, in the interest of justice, to make the order of remand more meaningful, he may be granted leave to defend. In any case, he submitted that on remand, the period of limitation would start running not from the date on which the summons was served on him but from the date on which the order of remand was made by the court.

8. Before I deal with the rival contentions, it is necessary to refer to the relevant provisions of the said Act. Chapter VIII of the said Act provides for summary disposal of certain applications. Section 39 says that

the provisions of this chapter will have overriding effect. Section 40 provides for appointment of Competent Authority. Section 43 provides for Special procedure for disposal of applications. Section 43 reads thus:

> "43. Special procedure for disposal of applications.
>
> (1) Every application by a landlord under this Chapter for the recovery of possession shall be accompanied by such fees as may be prescribed. The Competent Authority shall deal with the application in accordance with the procedure laid down in this section.
>
> (2) The Competent Authority shall issue summons in relation to every application referred to in sub-section (2) in the form specified in Schedule III.
>
> (3)(a) The Competent Authority shall, in addition to, and simultaneously with; the issue of summons for service on the tenant or licensee, as the case may be, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or the licensee or agent empowered by such tenant or licensee

to accept the service at the place where the tenant or licensee or such agent actually and voluntarily resides or carries on business or personally works for gain;

(b) When an acknowledgement purporting to be signed by the tenant or licensee or their agent received by the Competent Authority or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or licensee or their agent had refused to take delivery of the registered article, the Competent Authority may proceed to hear and decide the application as if there has been a valid service of summons.

4(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority

as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on that ground aforesaid.

(b) The Competent Authority shall give to the tenant or licensee have to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24.

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same as far as may be, within six months of the order granting of such leave to contest the application.

(5) The Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a court of small causes, including the recording of evidence."

9. The provisions of this Chapter make it evident that the legislature, by enacting them, intended to give speedy relief to landlords against licensees who refuse to vacate the premises after the expiry of the licence period. The licensee on whom the summons is duly served, cannot contest the prayer for eviction unless within thirty days of service of summons on him, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority. It is further provided that in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction. It is therefore, clear that if within thirty days of service of summons on the licensee, the licensee does not file an affidavit stating the grounds on which he seeks to contest the application for eviction, the licensee has to take the consequences. No leniency can be shown to him. The

landlord shall be entitled to the order of eviction. Therefore, there is an inbuilt period of limitation and there is no provision for condonation of delay. Section 43(4)(b) provides that leave to contest shall be granted if the licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises. Where the leave is granted, the Competent Authority has to dispose of the proceeding within a period of six months from granting such leave to contest the application.

10. The question is whether this period of thirty days could be extended by the court by resorting to the provisions of the Limitation Act. The answer to this must be in the negative. In this connection, it will be useful to refer to **Prakash H. Jain's case (supra)**. After referring to the nature of the provisions of Chapter VIII of the said Act, the Supreme Court observed as under:

> "12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given an overriding effect over any other provisions in the very Act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the

provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not "court" and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been

created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent authority can by no means be said to be "court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963."

11. It is amply clear that the Competent Authority is not a court, and therefore, cannot avail or exercise powers under the Limitation Act, 1963.

12. It will also be necessary in this connection to refer to the judgment of the Supreme Court in **Shah Manilal Chandulal's case (supra)** where the Supreme Court was considering whether time prescribed under proviso to sub-section 2 of section 18 of the Land Acquisition Act, 1894 to make an application to the Collector could be extended by resorting to section 5 of the Limitation Act. The Supreme Court held that the Collector / Land Acquisition Officer is not a court when he acts as a statutory authority under section 18(1). Therefore, section 5 of the Limitation Act cannot be applied for

extension of the period of limitation prescribed under proviso to sub-section (2) of section 18.

13. A reference may also be made to the judgment of this court in **H.M.P. Engineers Ltd.'s case (supra)**, where this court was dealing with the Arbitration and Conciliation Act, 1996 (for short, "the 1996 Act"). In that case, the Award was passed on 31/10/2001. The appellants therein challenged the Award by filing a petition on 20/12/2001 within the period prescribed under section 34 of the 1996 Act before the Delhi High Court. The Delhi High Court ruled that it had no jurisdiction to entertain the petition. A petition came to be filed in this court. The question before this court was whether considering the provisions of section 14 of the Limitation Act, 1963 the time taken in proceeding before the Delhi High Court, where it was filed and which had no jurisdiction can be excluded while counting period of limitation. This court considered section 34(3) of the 1996 Act where there is an inbuilt limitation period. After referring to the relevant judgments on the point, this court observed that the legislature has provided in clear terms that after the period of three months and thirty days, the court has no power to condone the delay in the presentation of the application. This Court further observed that the provisions of sections 4 to 24 of the Limitation Act, cannot apply to an application under section 34(3) inasmuch as the provision of section 34(3) is a complete and self contained Code, which does

not admit introduction or application of provisions of law contained in sections 4 to 24 of the Limitation Act and there is a clear indication of the intention of the legislature to exclude the provisions of sections 4 to 24 of the Limitation Act.

14. In the present case also, section 43(4)(a) and (c) contain inbuilt period of limitation. It is a complete and self contained Code. Besides, as held by the Supreme Court in **Prakash H. Jain's case (supra),** the Competent Authority is not a court for the purpose of making the provisions of the Limitation Act, 1963 attracted to the proceedings before it. It cannot be clothed with any power to be exercised under the Limitation Act, 1963. The judgments cited by Mr. Chandrachood have no application to the present case.

15. In view of the above, the impugned judgment and order dated 8/9/2004 passed by the Competent Authority, Pune, in Application No.31 of 2001 is set aside.

16. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)